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IN THE

Supreme Court of the United States

October Term, 1972

No. 72-1694

THE PEOPLE OF THE STATE OF NEW YORK,
Petitioner,

v.

ROBERT NEWMAN, M. D.,
Respondent.

On Petition for Writ of Certiorari to the Court of Appeals of the State of New York

PETITIONER'S REPLY MEMORANDUM

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Respondent's contention that certiorari should be denied simply because the proceedings to enforce the subpoena *duces tecum* are moot is unpersuasive. A viable controversy exists between the parties regarding the validity of respondent's conviction for contempt of court. And since any future execution of respondent's sentence would not be affected by the prior expiration of the Third July 1972 Grand Jury, this case is neither moot nor does it involve any complex jurisdictional issue.

Moreover, respondent's argument regarding the enforceability of the subpoena, which is purely an issue of New York State law, is factually erroneous and legally without support. Contrary to respondent's statement that the investigation into the death of Talmadge Berry is no longer "viable" (Respondent's brief, p. 8), a new investigation was commenced after the expiration of the Third July 1972 Grand Jury and is currently pending before another New York County grand jury. Contrary to respondent's assertion that the challenged subpoena was "issued by that particular [Third July 1972] grand jury" (*id.*), the subpoena was issued, as is clear from its face, by the District Attorney, counsel for petitioner. *See* Appendix. Contrary to respondent's suggestion that the subpoena was returnable only before the Third July 1972 Grand Jury, the express language of the subpoena imposed no such limitation. *Ibid.* And despite respondent's unsupported conclusion that the proceedings below to compel compliance with subpoena are moot (Respondent's brief, p. 8), it is clear that the New York State courts would require respondent's compliance with the subpoena should this Court reverse the judgment of the Court of Appeals.

Conclusion

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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July, 1973